IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8496 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAYANKBHAI B DAVE

Versus

SARVAJANIK EDU SOCEITY

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Appearance:

MR HJ NANAVATI for Petitioner

MR SM MAZGAONKAR for Respondent No. 1

MR RM DESAI for Respondent No. 3

Ms. B.R. Gajjar, Ld. AGP for State

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 26/04/2000

ORAL JUDGEMENT

1. Petitioner has filed the present writ petition challenging the order of the Tribunal passed in Application No. 32/88 on 18-7-1990. The petitioner was

appointed as Assistant Teacher under Respondent No.1 Sarvajanik Education Society, by an order dated 9-8-1977. By the said order petitioner was asked to intimate his willingness, of which petitioner has intimated his willingness to join as Assistant teacher and accordingly the petitioner joined his duty on 12-8-1977. The appointment was for a period till the end of academic year 1977-78. After the expiry of the academic year 1977-78 the appointment of the petitioner has not been continued or extended and the services were dispensed by the respondent no.1. Having felt aggrieved by the decision of the respondent No.1, petitioner moved the Labour Court in which a Reference has been registered. The Labour Court could not decide the matter, as in the meantime, the Gujarat Higher Secondary Schools Services Tribunal Act, 1983 was enacted and came in to force with effect from 20-1-1983. As per sec. 13 of the aforesaid Act, all cases and proceedings pending in any Court shall from the date of coming in to force of the aforesaid Act has been transfered to the Tribunal constituted under the aforesaid Act. Accordingly the reference which was pending before the Labour Court has been transferred to the Tribunal, and the Tribunal registered the case as Application No. 32/88. The Tribunal in its order held that the termination of the petitioner cannot be quashed. However, the Tribunal has directed the respondent school authority to pay one month salary in lieu of notice.

2. I have heard Mr. H.J. Nanavati, learned counsel appearing for the petitioner. Mr. Nanavati submitted that, the petitioner was appointed for a fixed term, that is, his appointment is to continue till the academic session 1977-78. He was appointed in a specific vacancy and therefore said appointment should be treated as temporary appointment on probation. It is also argued by learned counsel that, since the appointment of the petitioner is temporary appointment, the respondent cannot terminate his services without giving him a show cause notice or without drawing up a proceeding. Learned counsel consequently submitted that the Tribunal has committed an error in not quashing the termination order of the petitioner, and therefore, learned conusel submitted that, the order of the termination should be quashed and the respondent No.1 be directed to reinstate the petitioner in service.

3. I cannot agree with the submissions made by learned counsel for the petitioner because, from the appointment order dated 9-8-1977 it appears that the petitioner has been appointed with effect from 12-8-1977 and the appointment is purely temporary upto to the end

of academic year 1977-78. However, from the appointment order it does not appear in what scale of pay he is appointed as Assistant Teacher. Regarding the pay and allowance. the respondent has left it to the authority i.e. District Education Officer, Surat to decide the pay of the petitioner. It is admitted by learned counsel for the petitioner that, in fact no termination order has been issued to the petitioner and after the expiry of the academic year 1977-78 the petitioner is not being allowed to work as Assistant Teacher in the institute of respondent No.1. I cannot accept the argument of learned counsel for the petitioner that, the petitioner has been temporarily appointed in the post of Assistant Teacher on probation. There can be different types of appointments, which include permanent appointment, temporary appointment, adhoc and fixed period appointment etc. In the instant case, from the appointment order issued by respondent no.1 dated 9-8-1977, it is clear that the appointment of the petitioner is for a fixed period which will come to an end with the expiry of the academic year 1977-78. It is not in dispute that the academic year 1977-78 expires on 14-6-1978. Therefore I am of the view that after the expiry of the academic year 1977-78 on 14-6-1978, unless the appointment of the petitioner is continued or extended by issuing fresh appointment order, the petitioner has no right to continue in the post. The appointment comes to an end with the expiry of the term mentioned in the appointment order. Therefore I do not find any illegality in discontinuing the petitioner from the post of Assistant Teacher with effect from 15-6-1978, that is after the expiry of the academic year 1977-78.

4. Learned counsel for the petitioner is aggrieved by the finding of the Tribunal for not interfering with the termination order of the petitioner. Since the petitioner has been appointed for a fixed term, his appointment has not been continued or extended, I am of the view that the petitioner has no right to continue in the post when his fixed term of appointment expires. I do not find any merit in the present petition and accordingly it is dismissed. Rule discharged. Interim relief if any shall stand vacated. I make no order as to costs.

DT: 26-4-2000 ( P.K. Sarkar, J )

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